

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON, SC

Donna Rollings,

Plaintiff,

vs.

Michael J. Astrue, Commissioner of
Social Security,

Defendant.

2008 JAN 23 A 9 18

C/A No.: 2:07-0443-MBS

OPINION AND ORDER

Plaintiff Donna Rollings filed an application for a period of disability and disability insurance benefits on September 10, 2003, alleging disability commencing May 15, 2002 because of limitations caused by disc and back surgery, a ruptured disc, and neck pain. The application was denied initially and upon reconsideration. Plaintiff requested a hearing before an administrative law judge ("ALJ"). The ALJ held a hearing on August 3, 2006. On September 26, 2006, the ALJ issued a decision that Plaintiff was not disabled under sections 216(i) and 223(d) of the Social Security Act. The decision of the ALJ became the "final decision" of the Commissioner on December 15, 2006, after the Appeals Council determined that there was no basis for granting Plaintiff's request for review. Plaintiff thereafter brought the within action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the "final decision" of the Commissioner.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for a Report and Recommendation. On December 28, 2007, the Magistrate Judge filed a Report and Recommendation in which he determined that the Appeals Council failed to accurately evaluate the medical source statement of Dr. William L. Lehman, Jr., Plaintiff's treating orthopedic surgeon. Accordingly, the Magistrate Judge recommended that the decision of the Commissioner be reversed under sentence four of 42 U.S.C.

§§ 405(g) and 1383(c)(3), and the case be remanded to the Commissioner. Plaintiff filed no objections to the Report and Recommendation. The Commissioner filed a notice of no objections on January 10, 2008.

The court is charged with making a *de novo* determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and the record in this case, the court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly,

It is ORDERED that the Commissioner's decision be reversed under sentence four of 42 U.S.C. §§ 405(g) and 1383(c)(3), and the case be remanded to the Commissioner to fully consider Dr. Lehman's statement of October 31, 2006, its impact on Plaintiff's credibility and her residual functional capacity, and to continue the sequential evaluation process.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

January 22, 2008.